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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,145	11/30/2001	Brandon R. Mackay	14591.11	4556

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EXAMINER

BRITTAIN, JAMES R

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/998,145

Applicant(s)

MACKAY ET AL.

Examiner

James R. Brittain

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-16 is/are allowed.
- 6) ☒ Claim(s) 1-10, 13, 17, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 11, 12 and 18 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5. 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "each connector" (claim 7) lacks clear antecedent basis. The terms "the slit" and "the hole" in each of claims 19 and 20 lack antecedent basis because the claims depend from claim 17 rather than claim 18 where these terms are introduced. It is assumed that claims 19 and 20 should depend from claim 18 and the office action is based on this assumption.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-10, 13, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Weil (US 2704961).

Weil (figures 7-12) teaches eyeglass retainers comprising a cord 13' having a first end and a second end and first and second connectors 14' coupled to the first end and second ends of the cord 13' wherein the connector has hollow portion 15 and

Art Unit: 3677

apertures 22, 23 in the tubular wall that are inherently capable of being secured to the earpiece and the temple of eyeglasses if so desired. The connectors are comprised of rubber that is elastic and would be inherently capable of being inserted over the earpiece of less curvature than that of the shown glasses so as to be placed on the temple of the eyeglasses. Since the connectors are made of rubber the openings in the tubular wall are also expandable.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 4-7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spina (US 3397026) in view of Seron (US 4790646).

Spina (figures 1, 2) teaches eyeglass retainer structure with a cord having two ends with integral loops tightened by sleeves 26 to engage either the earpieces as shown in figure 1 or the forward end portions of the temples comprising the knuckles 42. The device can secure the eyeglasses to the neck or around the head. The difference is that it does not have connectors coupled to the ends of the cord. However, Seron (figures 1-6) teaches that it is conventional to utilize separate connectors 20 attachable to the ends the flaccid intermediate connector 14 in its as use condition so as to have a better functioning retainer. Note also that the connectors 20 also are loops adjustable by ring 30 to fit a wide range of temple widths. It would have been obvious to modify

Art Unit: 3677

the retainer structure of Spina so that the connectors are coupled to the ends of the cord in view of Seron teaching that it is conventional to utilize separate connectors 20 attachable to the ends the flaccid intermediate connector 14 in its as use condition so as to have a better functioning retainer in the environment of the connectors 20 also being loops adjustable by ring 30 to fit a wide range of temple widths. Seron suggests utilizing adhesive to secure the connectors to the intermediate flaccid connector as providing sufficient strength in this field of endeavor.

Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spina (US 3397026) in view of Weil (US 2704961).

Spina (figures 1, 2) teaches eyeglass retainer structure with a cord having two ends with integral loops tightened by sleeves 26 to engage either the earpieces as shown in figure 1 or the forward end portions of the temples comprising the knuckles 42. The difference is that it does not have connectors coupled to the ends of the cord. The device can secure the eyeglasses from the neck or around the head. However, Weil (figures 7-12) teaches eyeglass retainers comprising a cord 13' having a first end and a second end and first and second connectors 14' coupled to the first end and second ends of the cord 13' wherein the connector has hollow portion 15 and apertures 22, 23 in the tubular wall that are inherently capable of being secured to the earpiece and the temple of eyeglasses if so desired. The connectors are comprised of rubber that is elastic and would be inherently capable of being inserted over the earpiece of less curvature than that of the shown glasses so as to be placed on the temple of the eyeglasses. Since the connectors are made of rubber the openings in the tubular wall

Art Unit: 3677

are also expandable. It would have been obvious to modify the retainer of Spina so that there are connectors coupled to the ends of the cord in view of Weil (figures 7-12) teaching eyeglass retainers comprising a cord 13' having a first end and a second end and first and second connectors 14' coupled to the first end and second ends of the cord 13' wherein the connector has hollow portion 15 and apertures 22, 23 in the tubular wall that are inherently capable of being secured to the earpiece and the temple of eyeglasses if so desired.

Allowable Subject Matter

Claims 14-16 are allowed.

Claims 11, 12, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 19 and 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Conclusion

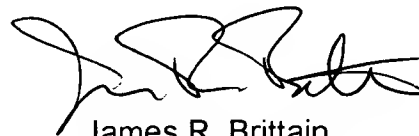
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents of Seron (US 3979795; US 4136934) and FR 2746933) teach pertinent retainer structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on Monday - Friday from 5:30 to 2:00.

Art Unit: 3677

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

A handwritten signature in black ink, appearing to read 'James R. Brittain', is positioned above the printed name.

James R. Brittain
Primary Examiner
Art Unit 3677

JRB
November 18, 2002